

Comments of the Independent Regulatory Review Commission



State Board of Osteopathic Medicine Regulation #16A-5324 (IRRC #2952)

Perfusionist

August 22, 2012

We submit for your consideration the following comments on the proposed rulemaking published in the June 23, 2012 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the State Board of Osteopathic Medicine (Board) to respond to all comments received from us or any other source.

1. Comments of the House Professional Licensure Committee. – Consistency with statute; Fiscal impact; Reasonableness; Implementation procedures; Clarity.

On July 27, 2012, the House Professional Licensure Committee (Committee) submitted the following comments:

- The Committee brings to the Board's attention that proposed Regulation 16A-5324 was published in the June 23, 2012 issue of the *Pennsylvania Bulletin*, approximately 803 days past the eighteen (18) months from the effective date of Act 19 of 2008. The regulations were due on April 12, 2010.
- The Committee raises issue with the Board's language in § 25.806. The statute, Act 20 of 2008, clearly specifies that the out of state perfusionist must submit a notification of emergency practice with an acknowledgement that the out of state perfusionist is subject to the jurisdiction of the Board. The statute also clearly specifies that the health care facility must certify certain information to the Board. The Committee takes exception to the proposed regulatory language that combines notification by the perfusionist and the certification by the health care facility. The health care facility cannot acknowledge that the perfusionist is subject to the jurisdiction of the Board. Likewise, the perfusionist cannot certify certain information about the health care facility.
- The Committee questions whether there is a fee for an out of state emergency service perfusionist registration.
- The Committee requests that it be clarified whether an out of state emergency service perfusionist needs individual professional liability insurance or is covered by a facility

policy and suggests the Board require proof of insurance prior to the perfusionist performing any services.

- The Committee questions whether the District of Columbia should be added to a list of jurisdictions in § 25.807 to be more consistent with language in § 25.809(c)(2).
- The Committee recommends a typographical correction in § 25.810(b)(5) "complete" citation reference.
- The Committee questions whether in § 25.810(b)(6) the word "sponsor" means continuing education provider as referenced in § 25.810(b)(1)(ii).
- The Committee recommends that § 25.810(b)(11) *Documentation of continuing education* be corrected to read: *Proof of participation in a site visitors' workshop or as an official site visitor consists of a letter from the ABCP which would then be similar to language found in § 25.810(c)(2)(vii) Continuing education activities.*
- The Committee suggests that § 25.810(b)(12) be written to read: *Proof of completion of continuing education shall be retained by a licensee for 5 years after completion of the continuing education or after the completion of the biennial registration period for which the continuing education was required, whichever is later.*
- The Committee requests a response as to whether there are any sanctions for a licensee who fails to submit proof of meeting continuing education requirements upon the Board's request pursuant to § 25.810(b)(13).
- The Committee requests correction of a typographical error in § 25.811(c) which should read . . . after the date of issuance *of* the license if the licensee has not provided proof of professional liability insurance coverage . . .

We will review the Board's responses to these issues in our determination of whether the final-form regulation is in the public interest.

2. Section 25.231. – Schedule of fees. – Fiscal impact; Reasonableness.

This section establishes fees for several licensure applications and biennial registration. We note that the Board's existing regulations include different fee amounts for other medical professions. For example, the application for unrestricted license to practice as osteopathic physician is \$45 under Section 25.231, whereas the proposed application fee for a perfusionist license is \$50. The Board should explain why the proposed licensure fees are reasonable in comparison to those currently imposed by the Board.

3. Section 25.810. – Continuing education for licensed perfusionist. – Reasonableness; Clarity.

This section establishes the continuing education requirements for licensed perfusionists. We raise three issues.

First, Subsection (b)(13) states: “The Board **will** audit licensees to verify compliance with continuing education requirements . . .” (Emphasis added.) Does the Board audit all licensees? If not, then we recommend the Board replace the term “will” with “may” in the final-form regulation.

Second, in Subsection (c)(2)(vi), the limitation specified in the last sentence is not clear. It states “two continuing education credits may be earned with a maximum of four credits biennially.” Is the intent to limit an instructor to two credits per course? The final-form regulation should clarify the Board’s intent.

Finally, under Subsection (c)(2)(vii), participation in site visits may be counted for continuing education credits. This provision specifies that “five continuing education credits may be earned.” It is not clear whether all site visits count as five credits, or whether five credits is intended to be the maximum number of credits. The final-form regulation should be amended to clarify the Board’s intent.